

REMARKS

Claims 15-51 are pending. Claims 1-14 are canceled as directed to an unelected restriction group. Claims 16, 26, 30, 31, 33 and 50-51 are amended. Support for these amendments come from [0019] of the published application and elsewhere throughout the Specification.

Outstanding Issues:

- Claim 26 is rejected as indefinite under 35 U.S.C. 112 ¶ 2
- Claims 15-19, 21-24, 26, 27, 29 and 31-51 are rejected as anticipated under 35 U.S.C. 102(b) by Ando et al. (US Pat No 5,576,299, published 19 November 1996).
- Claims 16, 17, 21-23, 26, 28 and 30-47 are rejected as unpatentable under 35 U.S.C. 103(a) over Kruzel et al. (US Pat No 6,066,469, published 23 May 2000).
- Claims 15-51 are provisionally rejected under the judicial doctrine of obviousness-type double patenting over co-pending US Patent Applications 10/733,621 and 10/728,521

I. Claim 26 is rejected as indefinite under 35 U.S.C. 112 ¶ 2

Claim 26 has been amended to remove “ophthalmic wound.” Applicant respectfully requests the rejection be withdrawn.

II. Claims 15-19, 21-24, 26, 27, 29 and 31-51 are rejected as anticipated under 35 U.S.C. 102(b) by Ando et al. (US Pat No 5,576,299, published 19 November 1996).

A. Claim 15

Claim 15 is directed to a method for treating a wound and requires use of a lactoferrin composition and a pharmaceutically acceptable polymer having a viscosity in the range of about 1 to about 12,000,000 cP at room temperature. Examples 2 and 4 in Ando disclose

lactoferrin granules and lactoferrin dissolved in distilled water. These examples are therefore not anticipatory of the claimed method because they do not teach the use of a lactoferrin composition and a pharmaceutically acceptable polymer having a viscosity in the range of about 1 to about 12,000,000 cP at room temperature to treat wounds. Recognizing this deficiency, the Examiner pieces together disparate and unrelated portions of the disclosure to allegedly derive an embodiment of the claimed methods. Specifically, the Examiner borrows from the boilerplate recitation on pharmaceutical formulations found in Column 4, line 21 – Column 5, line 3. For anticipation to apply, the identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 (Anticipation). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *Id.* Ando does not disclose the steps as recited in method claim 15 in any form and thus cannot anticipate the claim. *See also* MPEP § 2112.02 (Process Claims). Applicant respectfully requests the rejection be withdrawn.

B. Claims 48 and 49

Claims 48-49 are directed to a method for treating a wound and require parenteral administration. As with claim 15, the Examiner cannot merge the unrelated portions of the Specification found in Column 4, line 21 – Column 5, line 3 with the contents of Examples 2 and 4 to create a disclosure that anticipates these claimed methods. Applicant respectfully requests the rejection be withdrawn.

C. Claims 16-19, 21-24, 26, 27, 29 and 31-47, 50 and 51

The Examiner has cited Ando et al. for disclosing use of lactoferrin to treat aphthae and ulcers on the mucosa of the oral cavity. Claims 16, 31, and 33 have been amended to exclude oral wounds. MPEP § 2173.05(i). All other rejected claims depend from these claims directly or indirectly, apart from claims 15 and 48-49. Claim 26 has been amended to conform to the other amended claims. Ando et al. is now distinguished from these pending claims as amended. Applicant respectfully requests the rejection be withdrawn.

III. Claims 16, 17, 21-23, 26, 28 and 30-47 are rejected as unpatentable under 35 U.S.C. 103(a) over Kruzel et al. (US Pat No 6,066,469, published 23 May 2000).

The Examiner has cited Kruzel et al. for disclosing use of lactoferrin to treat burns. Claims 16, 31, and 33 have been amended to exclude burn wounds. MPEP § 2173.05(i). All other rejected claims depend from these claims directly or indirectly. Claim 30 has been amended to conform to the other amended claims. Kruzel et al. is now distinguished from the pending claims as amended. Applicant respectfully requests the rejection be withdrawn.

IV. Claims 15-51 are provisionally rejected under the judicial doctrine of obviousness-type double patenting over co-pending US Patent Applications 10/733,621 and 10/728,521

Applicant contends the other pending rejections should be withdrawn and restates that the pending provisional double patenting rejections should be removed and the instant application allowed to issue for the reasons set forth in Applicant's immediate prior response.

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02652US1 from which the undersigned is authorized to draw.

Dated: March 27, 2007

Respectfully submitted,

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